

**Transcription of the Debates Presided by Professor Alessandra Silveira  
(Chair) and Moderated by Professors Teresa Carballeira and Cláudia Viana  
(Debaters)**

**Professor Teresa Carballeira**

I've been very impressed with the words, expressions and ideas that we've heard today, some of which I've pointed out. Among them, there were such interesting ideas as that of seeking the affirmation of cultural identity through others being a failure in itself, being a failed process; that culture as a value cannot be based on the idea of purity or the incommensurability of culture, and that European culture is based on cultural diversity, and that the best way to kill a culture is precisely through imposing homogeneity or "economising" it. We also recalled that cultural integration does not imply a loss of diversity, but instead its expansion and multiplication; that cultural rights are not assets of States but of individuals. We were also told that the cultural difference and diversity are inversely proportional. And a whole myriad of ideas that I think we have to keep in mind in order to now consider the European Union's performance in this field.

Additionally, I would also like to mention the contribution of Article 167 of the TFEU, of which Professor Jesus Prieto reminded us, where it is said that one of the major objectives of the European Union is to promote the flowering of the cultures of member states, to promote cultural diversity, and create Europe cultural heritage. How can this be achieved, how has the Government of the EU attempted to achieve this? Through launching a series of public policies, such as the creation of the European Heritage Label, promoting European Cultural Itineraries, and we Galician's know a lot about the latter, *The Route of Santiago* is justly symbolic, a point of diffusion of the whole of European culture. European cultural policy is also promoted through the creation of a whole series of symbols, such as the establishment of European capitals of culture, as we have right here, Guimarães 2012, the creation of cultural programmes mainly focusing on cinema and finally, and this is quite recent, the creation of a European digital library. These are some of the actions taken by the EU precisely to foster this diversity, to allow this common culture to flourish.

Very appropriately, two days ago, the ministers of Culture of all Member States met in Brussels and established a cultural policy for the years 2014 to 2020. Many things fall under this cultural policy, but what I would like to highlight as being most important is that 18 billion euros have been set aside during this period for the following purposes: 900 million for cinema; 1.5 million for the digitisation of works and 200 million for miscellaneous projects and this would be, in short, our cultural programme as the Euro zone, as the EU. Given this, I'd like to question, primarily Professor Prieto and Professor D'Orsogna. Professor D'Orsogna, do you believe that this idea of the incommensurability of cultures, this purity that cannot be raised to cultural value, a heritage like ours? Do you believe that we are succeeding through public policies such as these, that we are fostering European culture with such measures? And to Professor Jesus Prieto, I'd ask if this is the best way to channel diversity, to create a plural culture, a diverse European culture?

Finally, I would also like to enhance everything that has been said with some more questions that refer to fitting into or establishing a link with the cultural diversity that comes from countries outside the Euro zone, i.e. from third countries, as we say, as it has everything to do with what has been said. In fact, whenever we speak of the contributions of individuals who bring their cultural heritage to Europe, they are only seen from a single perspective, the perspective of the immigrant, solely and absolutely. And the legal treatment is exactly that of a legal classification such as this, how to integrate them, how far their freedoms extend, how far diversity extends? But from the cultural sphere, from our idea that we have been given that the contribution of other cultures only fertilise ours, multiplying it and nurturing it, has never been looked at. I also wanted to say here that the issue of immigration in Europe is a very

serious topic, an appalling topic, a kind of epidemic. I believe this is a stereotypical idea, because, actually, I checked the data and the truth is that the proportion of immigration we have in Europe, i.e. from other cultures, is no more than 6%, 6.4%. This means that, out of 500 million Europeans, only 30 million are, shall we say, foreigners with all these connotations. Moreover, these foreigners, who I'd like to refer to in another way, but for the sake of understanding, I will use the term, are not in the countries that we hear most about in relation to immigration problems. They are in Luxembourg, which has 40%, in Estonia, which has 17%; they are in Latvia, Ireland and Spain (13%), basically. Portugal, for example, receives 4% and Germany or France receives around 6%. Well, what I mean to say is that it is not such a serious problem, given that there are more Europeans in other countries than there are non-Europeans in Europe. Even so, we cannot achieve this degree of integration, of coexistence and diversity, and this is even more harmful because our constitutional values, as Professor Scoca reminded us, are freedoms, freedom of ideas, freedom of thought, freedom of belief and cultural diversity. So I ask Professor Scoca how, and how far, can we go, for example, on an issue as controversial as that of religious freedom, should we, as Europeans armed with all these fundamental freedoms and rights, create policies of integration and policies for developing personal freedoms and promoting cultural diversity? Or rather, should we not protect these kinds of cultural minorities instead of trying to force them through the roller of European culture? And that's all, thank you.

### **Professor Cláudia Viana**

In times of crisis, let me ask what European Union is this? It is, in my view, a Union based on human dignity and respect for diversity or diversities. It is a Union that, as I often say, is a radically different Union in the sense that it lies in the individual, i.e., it lies in diversity. And the question that arises is how to achieve an ever closer union, while preserving identity and diversity. It seems to me that it is here that the principle of tolerance acquires a special importance. Tolerance appears naturally in the institutional architecture of the European Union, it is there in day to day functions, especially those performed by national governments, and it is also there in the national courts. This tolerance should also guide the actions of political actors, who have to be capable of finding solutions that leverage closer relations between the peoples, safeguarding their identity within the Union, in other words, and safeguarding diversity. In the current context of crisis, this tolerance should be a tolerance based on the union of Men and which, therefore, cannot be considered within the traditional frameworks of national sovereignty because, as Jean Monnet said, "the aim is a union of Men, not a union of States". So I leave you here with three issues to be discussed, and which I put to the three speakers. To Professor António Carlos Pereira Menaut, do the interventions of the troika that occurred not only in Greece, but also in Ireland and Portugal, undermine national identities or, rather, because they have been willingly accepted by these peoples, do they constitute an act of freedom and an act of emancipation aimed at tolerance among men, which is not necessarily the tolerance of the traditional frameworks of the States? I would like to ask Professor Prieto if the current prevalence of the economic is not ultimately the prevalence of well-being and, very particularly, the prevalence of intergenerational balance to which we should all be committed. And I would like to ask Professor Willis one final question, whether the crisis in Europe is ultimately a crisis of its own immune system, and therefore the answer has to be provided by the system itself? Thank you very much.

### **Professor Domenico D'Orsogna**

The stimulus to further study by Professor Teresa Carballeira Rivera regards, on the one hand, the use of the term "incommensurability", referring to the theme of relationships between cultures, relationships that, with hindsight, are proclaimed impossible (hence: incommensurable) by some theoretical currents, mentioned in my paper, who are unable to overcome an idea of culture as a closed sphere and, consequently, of a conception of "mosaic" multiculturalism, which limits itself to postulating the mere coexistence and juxtaposition of irreducible differences of identity; on the other hand, it recalls the affirmation according to which the protection of cultural diversity in European law is based on an adherence to a certain idea of culture, in an anthropological sense as well.

With regard to the term “incommensurability”: I used this term in the epistemological sense, in the meaning established in particular by Thomas Kuhn in his famous study of the structure of scientific revolutions, *The Structure of Scientific Revolutions*: a structural situation of misunderstanding and “untranslatability” that, in the stages of “extraordinary science”, that is, of profound upheaval, “crisis” and the transformation of science, appears among the scientific community. Briefly: a scientist who adheres to a different cultural paradigm or to a different tradition of research “lives in a different world” (a different scientific community), untranslatable in terms of the scientist who adheres to a different paradigm (and therefore belongs to a different scientific community).

This radical approach (though never so radically supported by Kuhn, but rather, by his critics) was, as is known, later tempered and left behind. In addition to Kuhn’s later writings, it is worth recalling the methodology of the “research programmes” of Imre Lakatos, Larry Laudan’s theory of “research programmes”, as well as the contributions of Paul Feyerabend, all approaches that have allowed the possibility, at a given moment in history, for coexistence and dialogue among a number of paradigms, traditions or research programmes, thus eliminating the excessive structural rigidity inherent in the original version of Kuhnian theory.

It seems to me that, especially in the setting of Lakatos and Laudan, a clear need for the “protection” of scientific traditions and minority research programmes is established, specifically from the point of view of the protection of cultural diversity.

I have the impression that many interesting ideas from this field of philosophical reflection, albeit sometimes not declared, are highly regarded by scholars, who, both in the legal and non-legal fields (sociological and anthropological), have dealt recently with the themes of today’s session of the conference.

I am thinking, in particular, on the one hand, of the studies of Seyla Benhabib, who I mentioned in my paper, which expand and develop, in other respects, the approach of Habermas; on the other hand, in the legal field, the study of Hugh Patrick Glenn on legal traditions of the world. As regards adhesion or not, at the juridical level, in terms of EU law, the debate is, as you know, open to an anthropological concept of “culture”: there are those who believe it is so, there are those who believe that it is not so, that, at a legal level, there should be no acceptance of an anthropological conception of culture.

What is certain is that, also at the basis of the traditional construction of citizenship, founded on the nation-state, there was the presupposition of an idea of culture in the anthropological sense; an idea of culture that, in the field of anthropology too, has long since been superseded. Therefore, if anyone wants to maintain that, at European level, the “anthropological” concept of culture assumes legal importance, we can be certain that no reference is being made to that dated anthropological meaning of “culture” (closed and exclusionary) which was at the basis of national citizenship.

As regards whether the policies put in place in the European context are suitable for stimulating the construction of a (constitutional) European identity that does not constrict internal cultural diversity (national, sub-state and individual), what I would say is that, if these are in fact policies for culture (or rather cultures), and not cultural politics, i.e., if these provide incentives and rewards, and therefore foment and amplify the possibilities for cultural diversity, it seems to me that they are suitable means for attaining this aim. Thank you.

### **Professor Jesus Prieto de Pedro**

Thank you very much. The questions were many, and very significant and complex. I will try to make some brief observations about the questions asked, particularly those addressed to me. Well, diversity and culture in Europe really is a subject that has many dimensions. Firstly, I wanted to point out that Europe is a regional integration process, so, as with all integration processes, if we actually want this integration to be consolidated and seized upon, we must deal with the cultural aspect. Integration processes have four dimensions, a political dimension, an economic dimension, a social dimension and a cultural dimension. What happens is that it is not common to

simultaneously start with the four dimensions; usually we start with the easiest. Within the context of the 1950s, when Schuman and Jean Monnet conceived the idea of Europe, they were deeply concerned with being able to move forward within a Europe that was politically divided and very nationalistic at that time, it remains so today, but it was even more so back then. So they began with the economy, which was the easiest. Additionally, they had another strategic objective, which was to neutralise Germany, which had caused the wars, neutralise it in relation to coal and steel, which were the great sources of energy, it was a form of applying an antidote. But there is no doubt that Europe, if Europe can be designed and integration be established as the objective, this is because it has a common cultural background. If Europe did not have this common cultural background, such integration could not be undertaken. A background that underpins all national projects, which obscure and obstruct with their cultural elements, and also tend to confuse the great linguistic diversity. But nevertheless, there is a very deep cultural background, a cultural background that is essentially the contribution of Greece and Rome, which are like two patches of olive oil that stretched out and left a well of ideological reason, a well of institutions, the legal framework, Roman law, etc. And all this has impressive weight, spectacular weight, it is also a language that gave birth many times, that then generated many Romanic languages, it is not the only one, of course, but ultimately it underlies everything. And then there is a phrase that is quoted widely, when he was older, shortly before he died, Jean Monnet said, "If I was given the opportunity to begin the European project again, and I would start with culture". Well, it was above all a confession wrapped in a reflection. Culture as an institutional policy came very late to Europe, but culture is what forms the basis of the European edifice. And if it did not form the basis of European integration, I dare say that this economic crisis, this economic crisis in Europe, would have already finished Europe. If these other cultural and political and social factors did not exist, which nevertheless still have a long way to go? That said, Europe is diversity, but it is a complex diversity, it is diversity with a common plan and it is diverse in its history. And it is much more diversity at times like these, but, historically, Europe has always been receiving and giving, but today it is also a much more intense diversity with immigration, mainly by workers. Europe wanted cheap labour, it brought in workers from the third world when it suited it. But it was soon realised that these workers are people who are also cultural citizens. And here is a challenge, one in which there is still a long way to go, because the French formula, which was widely applauded some time ago, we see that there is no integration, no recognition of equals, nor is there in the Anglo-Saxon formula... The formulas are being questioned at this time. And so there is another level of diversity that would interest Europe. Europe tried to impose its model as the canon of the organisation of political democratic rights, as a model of democracy for the rest of the world and also as a cultural model. But Europe cannot forget the rest of the world and its diversity, and I think it forgets, enormously, the diversity of the rest of the world. Teresa, regarding the problems you mentioned, there is now the Media Mundus programme, for example, but it is very poor. I greatly admire the programmes that Europe has to assert its identity and diversity, they seem magnificent to me, I don't question them, but also, in Article 167 of the TFEU, there is a paragraph that requires Europe to cooperate with third countries in cultural matters. And then, the policies followed are very poor and inadequate. Returning to the Convention on Cultural Diversity, there, for example, we find a plan for a fund to promote cultural diversity in the least developed countries, and this fund was created in 2010 but did not reach the 3 million dollar mark, with EU countries contributing very little, there was a lot of selfishness! I therefore propose that the EU, with these 18 billion mentioned for the years 2014 to 2020, create a policy with the outside world and thus splits it into 9+9, 9 for internal diversity and 9 for the international fund for cultural diversity, so that the poorest and most modest countries may also boost their cultural industries. The formula 1+1 would not be bad; it would be a formula that we could propose. And Cláudia, you commented on the prevalence of the economic, well, actually, we are in one of those periods, and also in Europe it seems very normal because we are very focused on economics, although we are not the most focused, there are other areas that follow this line further. And regarding economics, it is not that we have to postpone it, but economics must be subject to political values, it must be subjected to democratic values, to fundamental rights. And

at times like this, this is not clear, at these times it is the “democracies” of the market and not the democracies of politics, and the markets are not fair and equitable redistributors of equality, above all in the context of cultural goods and services. And I put these “democracies” in quotation marks.

And a brief comment in relation to tolerance, to me, tolerance seems a good thing, but it seems a good thing as long as tolerance does not adversely affect fundamental rights, because tolerance is a pre-legal state of acceptance, of recognition of another. But rights form a stronger system, a more efficient, more effective system. I prefer to defend fundamental rights and this is a theory that is well developed and articulated in some strands of philosophy of Law, Javier de Lucas, for example, is critical of tolerance in the sense of it being an alternative to fundamental rights. The strong, modern and current mechanism is to defend positions of difference with rights and not only with tolerance, tolerance, for example, when Voltaire wrote the *Treatise on Tolerance*, well, it was a major step forward at that time, but it was not within the modern ideology of rights.

### **Professor Franco Scoca**

I will be very brief. As for cultural diversities and the protection of cultural diversities I think I need to first emphasise that I see no legal obstacles to protecting cultural diversities. The obstacles may be concrete. Consider, for example, the system of communications: communications that occur in only one language, evidently, tend to elide the way of speaking in other languages. If we look at the impact of television on local languages and dialects, for example, is easy to see (and this can be supported by documents and studies at both European and international, as well as at state and sub-state level) that these have almost vanished.

This has also meant the disappearance of local poetry, as well as local customs and ways of behaviour. The concept of culture does not only contain ideas, the manifestation of ideas, but it also includes behaviour, in its symbolic value as well.

And so I pose another problem: to what extent it is possible to protect cultural diversities?

On a conceptual and ideal level, there are no limits; in terms of behaviour, at a practical level, the problem of identifying concretely the tolerable limit arises, since some behaviours that are “normal” in some cultures may appear unacceptable (at a certain historical moment, also because of reasons of backwardness and a lack of social awareness in the “majority” culture).

The problem of religious freedom has been mentioned. In Europe the separation of Church and State, the principle of state secularism, is now established. The problem, with hindsight, does not arise in this regard: it does not pertain to the possibility of offending active religious freedom, but more practical aspects.

Consider, for example, places of worship. In Italy, as is well known, there have been objections at the judicial level even, regarding, for example, the construction of mosques. These were then overcome, but with great difficulty, because, obviously, there is backwardness in thinking about the freedom to worship for religions other than that of the majority of Italians.

But, above all, the problem involves two aspects: religious symbols and religious education. With regard to religious symbols, there are those, for example, the Islamic headscarves, which can lead to problems of public security, insofar as the veil, in covering the female face, like the full-face helmet, for example, could allow people to take part in activities without being recognisable.

In Italy a problem has arisen, in particular, in relation to the crucifix, which according to some old regulations must be present in all classrooms. This has led to a series of legal disputes which were then brought before the Grand-Chambre of the European Court of Human Rights, which ruled, as we all know, on a way to reach a compromise.

In relation to this issue what is highlighted, according to Italian doctrine, is not so much the active freedom of religion, as the passive freedom, the freedom, that is, of not being influenced by religious symbols. How can this problem be solved? In Italy those regulations still exist. I think if we start firmly from the principle of a secular

state, of course, no symbol should be on display in public places. That of private places is another and different problem.

If, instead, a slightly more complex and articulated argument is made, in which, on the one hand, it is considered that the crucifix is probably not only a religious symbol but is also the symbol of a cultural tradition and to this we add that, in reality, we should also look at the degree of offensiveness of a religious symbol attached passively to a wall for those who do not belong to that religion, here we could arrive at a similar result to that reached by the European Court of Human Rights. Thank you.

### **Professor Willis Guerra**

Well, many thanks to Professor Cláudia for the question, for me, it is always a pleasure to receive a reaction to what we say, we never know if there will be any, or what it will be. And in your case I thought it was excellent, because it gives me the chance to state my position on the general theme of this meeting on the basis of this model, these metaphors that I produced here, and from which, for example, I would say Europe is suffering from an allergy. Is undergoing an allergic reaction, the crisis is allergic, which does not mean that it cannot be serious! There are very serious allergies; I suffer from an allergy, for example. How did I contract my allergy? Excessive protection in childhood, excessive closure to the environment and then, as a result of being exposed to the environment, now I'm suffering from *gripe di fieno*, hay fever, as the Italians say. So I think Europe has an obsession with Europe that needs to be overcome as well. In other words, above all, Europe needs to open up again, we are here in Portugal. All this concentration of an integration, that is coming at the expense of the open stance that Portugal has always had, even putting itself, why not, somewhat outside of Europe, as it was until relatively recently. I am of the time when it was said here in Portugal, "I'm going to Europe" when one was going to Paris or somewhere like that. In other words, there's no longer any doubt that if you are in Portugal, you are in Europe. But why is it that Portugal cannot recover its transatlantic vocation, its overseas calling, its ability to integrate more deeply into the world system, which the history of Portugal widely demonstrates. What is happening is a problem of integration of the Euro zone, of Europe, of global society, this global society whose origins lie in Europe itself! With this sense of closure in on itself, this preoccupation with itself, it is missing opportunities that it can no longer see, the blind spot Marcílio Franca talks about. So countries with such grand cultural backgrounds, Greece is the source of all civilisations going through what it is going through! With the cultural capital that it has, we in Brazil needing it so much, we are the great power now; it's a joke from my point of view, with all due respect to our countrymen! Okay, we're having some success there, but our cultural deficit is very large while the culture surplus of Greece is much larger, i. e., I don't know if I made myself clear, so clearly in answer to your question, no, there is no European solution for the European problem. Because this is the problem, Europe's obsession with itself, there is no European immune system, there is a global immune system causing an allergy in the European sector of this world, which will be overcome above all if it is recognised as such, this problem of aversion to what is external and obsession with what is internal.

### **Professor António Pereira Menaut**

I'll try to respond briefly to Professor Cláudia Viana on the interventions of the troika, whether they should be criticised because they call into question national identities or rather they are the opposite, an act of liberation that should be welcome.

I think of the European Union as a political community composed of other, minor and previous political communities, a polity of polities, where the rulers of the highest polity may have to interfere under certain circumstances in the affairs of lower political communities – a possibility that cannot be ruled out, of course. We have now no time to consider other data that would affect our answers, were we given the time – the kind of economy we are immersed in, the specific nature of present-day financial Capitalism, and so forth – but all other things being equal, I admit that when you are in a continental-size process of integration, it may sometimes become necessary for the European government to interfere in the affairs of one or more of the lower political communities.

However, I still think there are two different ways of considering the issue. We are going through a serious European crisis these days. As in most political and economic affairs, there may be different procedures for dealing with the crisis – yet, our European and national rulers have chosen only one after in a quasi-dogmatic fashion. The disastrous results, nearly amounting to scorched land in Greece, suggest to try otherwise or to change the medical prescription, but they seem to have set a collision course and do not mind much any other opinions. The constitution of the highest political community, or for that matter its equivalent, the European Treaties, may be conceived as a pyramid or, in a more simple way, as a limit or ceiling – and this duality makes a difference. For example, if we consider the top of this compound polity and its constitution and ruling institutions as an upper limit or ceiling, when something comes to need to be repressed, it will be repressed – but that is all. Legal pluralism, cultural complexities, and minor identities may survive. When the Arkansas racists in the 1950s failed to respect the mandates of the US Supreme Court, the Federal government sent the army in, but it did not try to reform the Arkansas Constitution neither the public institutions, nor the mindset of the people of Arkansas. The goal was just to repress those wrongdoings that had exceeded the ceiling or upper limit. Had the Americans had a pyramid-like political scheme, the answer would have been different: decreeing to instill cultural values, replacing Arkansas identity, imposing laws from above, taking even the micromanagement from the hands of Arkansas authorities and transferring it into federal authorities, transforming the executive and legislative of Arkansas in mere delegates of Washington... In the European Union, as in any other living pluralistic, compound polity, there will always be problems, but how we deal with them? This is the question.

To put but an example, should bankruptcies be ruled out always and in all cases in the European Union? Had Greece been let to fall into bankruptcy in 2008, such a course of action would have been more respectful with human dignity, so dear to European documents – not to mention the fact that after going bankrupt and out of the euro, the recovery of its economy would possibly be easier and quicker. In 2011, the state of Minnesota went bankrupt; California has repeatedly filed for bankruptcy; during the 19<sup>th</sup> century there were several state bankruptcies – and no one thought the dollar was on the brink of disappearing. Nothing serious happened because the American system admits of a degree of imperfection, while the European way of solving problems, the one which is being put into practice right now, consists of solving problems removing the freedom of the people to do things by themselves and suppressing the risk that people may make mistakes. Present day Greek or Spanish governments are neither very free nor very accountable to their peoples – they are accountable of the troika, another kind of accountability. American integration is more robust than European integration while remaining more pluralistic in spite of the United States being much older than the European Union; no one wants to leave the American Union so far. But it is not based on making everyone uniform within a pyramid-like scheme; it is rather based on the concept of the Constitution as an upper limit, as a ceiling which must always be respected, but a ceiling that allows for a considerable degree of heterogeneity and pluralism below it because many things – laws, policies, institutions, legal orders, judicial rulings – do not come from top to bottom and are not derived from the federal Constitution.

A further and very interesting question in what Professor Cláudia says is the following. The people directly affected by a troika intervention may see it as emancipation, and you know that it would be far from being for the first time in history. Mexican tribes (other than the Aztecs) were dealt with by the Spaniards much softer than by the Aztecs. During the processes of building the nation states in Europe many similar cases can be found: liberating persons individually while suppressing their political communities, identities and cultures.

Are these emancipatory interferences doomed to end, or to weaken, cultures and minor political communities? Indeed, a certain degree of cultural transformation is not excluded from the reforms deafeningly demanded to the so-called PIGS (Portugal, Ireland, Greece, and Spain). For example, when Northerners and Protestants blame us Southerners and Catholics for our real or supposed laziness and corruption, they are indirectly suggesting us to abandon part of our identity and culture. Is this what we want?

